

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

Crl.Rev.Pet.No. 2232 of 2003 (A)

**CRL.A 25/1998 of D.C & SESSIONS COURT, TRIVANDRUM DATED 20-06-2002
CC 344/1994 of J.M.F.C.-II, NEDUMANGADU,**

REVISION PETITIONER(S)/APPELLANTS/ACCUSED 1 AND 2 :

- 1. RADHA, D/O. GOMATHI, KATTIL VEEDU,
NEAR PARAYIL TEMPLE, UDAYAGIRI LANE,
THIRUMALA VILLAGE**
- 2. GEETHA, D/O. GOMATHI, KATTIL VEEDU,
NEAR PARAYIL TEMPLE, UDAYAGIRI LANE,
THIRUMALA VILLAGE**

**BY ADVS.SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.SUMAN CHAKRAVARTHY**

RESPONDENT(S):

**STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM**

BY PUBLIC PROSECUTOR SRI.N.SURESH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
21-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VS

P.D.RAJAN, J.

Crl.R.P.No.2232 of 2003

Dated this the 21st day of October, 2015

ORDER

Revision petitioners are the appellants in Crl.Appeal No.25/1998 on the file of Sessions Judge, Thiruvananthapuram, challenges the concurrent findings of conviction passed by the trial court under Sections 448, 323, 379 read with 34 of the Indian Penal Code. They were accused in C.C.No.344/1994 on the file of Judicial First Class Magistrate Court-II, Nedumangadu, convicted and sentenced to pay a fine of Rs.1,000/- each under Sections 448, 323, 379 read with 34 of the Indian Penal Code, in default of payment to undergo simple imprisonment for 2 months and also sentenced to pay a fine of Rs.3,000/- under Section 379 read with 34 of the Indian Penal Code, in default of payment of fine, simple imprisonment for 3 months, against which they preferred an appeal, which was dismissed by the appellate court. Being aggrieved by that, they preferred this revision

petition.

2. The prosecution case is that on 02.05.1994 at 7.30 p.m., the accused persons, in furtherance of their common intention, trespassed into the house of PW1 and A1 assaulted her, while she was in her pooja room and A2 kicked on the left side of abdomen and A1 snatched her ear rings and A2 snatched a chain from her neck and thereby they committed the offences. On the basis of the information, Vattiyoorkavu police registered the above crime and after investigation, laid charge before the Judicial First Class Magistrate Court-I, Nedumangad.

3. During trial, prosecution examined PWs 1 to 11 and marked Exts.P1 to P4. Exts.D1 to D2 were marked on the side of defence. The incriminating circumstances brought out in evidence were denied by the accused while questioning them. They did not adduce any other oral evidence and the trial court convicted them.

4. The learned counsel for the petitioners contended that prima facie no materials were adduced by the prosecution to attract the offence as alleged. The oral

evidence of PW1 itself is not sufficient to convict the accused. The trial court failed to appreciate the evidence in its correct perspective which caused miscarriage of justice and which needs interference invoking revisional jurisdiction.

5. The learned Public Prosecutor opposed the argument.

6. In the light of the above argument, I have gone through the evidence of the prosecution witnesses for ascertaining whether there is any illegality committed by the trial court while appreciating the evidence. It is admitted by PW1, the injured in this case that the accused are her sister's children. On the date of incident while she was standing in pooja room, the revision petitioners trespassed into the room and assaulted her and she sustained injury to her neck and ear and immediately she was removed to hospital. PW10 treated her at Government Hospital, Peroorkada and issued Ext.P10 medical certificate. He noticed lacerated wound 2cm long right end of left ear lobe, pain and swelling right ring

finger, pain right side pelvis and pain over right side of head. The above medical evidence is not corroborating without the oral evidence of PW1. Next allegation is that the accused snatched her ear ring and gold chain. For ascertaining that aspect, I have gone through the evidence of the investigating officer. On 30.08.1994, PW9 was the Sub Inspector of Police. The investigation was conducted by PW8, who arrived at the place of occurrence and recorded the statement of PW1 and on the basis of that he prepared Ext.P1(a) First Information Report and Ext.P2 scene mahazar. Ext.P1(b) was her body note. He examined independent witnesses PWs2 and 3. Even though, these witnesses were questioned, nothing has been recovered from the accused on the basis of the information given by PW1. PWs 4, 5, 6, 7 and 8 did not support the prosecution case. But PWs 2 and 3 deposed that they heard the hue and cry of the injured but they did not see the incident. Analysing the evidence of these witnesses, it is found that the prosecution has utterly failed to prove the alleged theft. When there is no

evidence of dishonestly moving any movable property out of the possession of the person without her consent, no offence of theft is proved. In the light of Ext.P2 wound certificate, the conviction is not maintainable. Therefore the revision petitioners are entitled to get the benefit of doubt. There was dispute between the revision petitioners and PW1 which lead to the incident, which was admitted by PW1. In the circumstances, the revision petitioners are entitled to get the benefit of doubt.

In the result, conviction and sentence passed by the trial court under Sections 448, 323, 379 read with 34 of the Indian Penal Code is set aside and the revision petitioners are set at liberty and accordingly this revision petition is allowed.

Sd/-
P.D.RAJAN
JUDGE

VS

/TRUE COPY/

PA TO JUDGE